Supreme Court, U.S.
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No. 95-2033

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

BP CHEMICALS LIMITED and
STERLING CHEMICALS, INC.,
Petitioners,

v.

HOECHST CELANESE CORPORATION,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF IN OPPOSITION TO THE SUPPLEMENTAL BRIEF OF PETITIONERS

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Respondent Hoechst Celanese Corporation ("Celanese") respectfully submits this brief in opposition to the supplemental brief filed on September 18, 1996 by BP Chemicals Limited and Sterling Chemicals, Inc. (collectively "petitioners"), which uses the Federal Circuit's recent decision in *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576 (Fed. Cir. July 25, 1996), as a basis for rehashing the same litigation-inspired linguistic arguments already rejected by the Federal Circuit, the district court, and the jury. As shown herein, there is no "lack of uni-

formity" or "disparity" between the Federal Circuit's decisions in this case and in *Vitronics*, so the latter provides no basis for altering the Federal Circuit's result in this case.

From the outset of this case, petitioners have tried to manufacture an ambiguity over the term "dimension" in the '806 patent specification as an artificial means to excuse their willful infringement. That effort has been properly rejected three times already. As held by the jury, the district court, and the Federal Circuit in this case, the term "dry physical dimension" refers to a linear measurement, not a volume. Under its ordinary meaning, "dimension" is a one-dimensional length, not a three-dimensional volume. *See* Brief in Opposition, at 20-24. Contrary to the petitioners' assertions, that definition is not a unique, secret or subjective meaning allegedly known only to the inventor.

Without doubt, the definition of "dimension" adopted as a matter of law by the Federal Circuit is its ordinary and common meaning that is consistent with the patent documents and the usage and understanding of those skilled in the art. Not surprisingly, the Federal Circuit in *Vitronics* specifically relied on its prior decision in this case for the proposition that "[a] technical term used in a patent document is interpreted as having the meaning that it would be given by persons experienced in the field of the invention unless it appears from the patent and prosecution history that the inventor used the term with a different meaning." 90 F.3d at 1582. Hence, petitioners' allegation of inconsistency between decisions of different Federal Circuit panels in that regard is baseless.

Moreover, the Federal Circuit in *Vitronics* also cited its opinion in this case for the proposition that an interpretation that excludes the inventor's preferred embodiment from the scope of the patent claims "is rarely, if ever, correct." 90 F.3d at 1583. In *Vitronics*, the Fed-

eral Circuit rejected the defendant's reliance on expert testimony that interpreted the claims so as to exclude the inventor's only disclosed embodiment. *Id.* at 1583-84. In this case, the Federal Circuit rejected petitioners' attempt to do the same thing. Brief in Opposition, at 23; Pet. App. 9a, 22a. The only difference in the cases is that the district court and jury in this case got it right the first time. Once again, petitioner's attempt to create a conflict in the two decisions is meritless.

Thus, for the reasons already stated in the Brief in Opposition and confirmed herein, the petition should be denied in its entirety.

Respectfully submitted,

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